IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 212 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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SHIV GAS AGENCY

Versus

MANAGING DIRECTOR SHRI JAYANTIBHAI G PATEL

Appearance:

1. Criminal Revision Application No. 212 of 1999

MR PM DAVE for Petitioner No. 1

MR HM PRACHCHHAK for Respondent No. 1

MR DESAI, APP, for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 20/08/2002

ORAL JUDGEMENT

1. The revisioner was the complainant in Criminal Case No.87 of 1998 before the Chief Judicial Magistrate, Godhra. The complaint was lodged under Section 138 of

the Negotiable Instruments Act on account of dishonour of cheque issued by respondent No.1. The Court, after recording the statement of the complainant, passed an order for issuance of process. During the pendency of the complaint, present respondent No.1-the accused in the complaint, gave a demand draft for Rs.72,600/-, the amount of cheque, and the learned Advocate for the revisioner-complainant passed a Purshis in the margin of the last page of the complaint that, in view of receipt of the draft, dispute does not survive and, therefore, the complaint is withdrawn. On basis of that endorsement, the learned Magistrate passed an order to file the complaint.

2. Aggrieved by the said order, the revisioner is before this Court. The grievance of the revisioner, as emerging from the revision, is that the withdrawal by the advocate was without instructions and without the knowledge of the revisioner and that the offence is not compoundable and, therefore, this revision may be entertained.

3. Learned Advocate Mr. Dave for the revisioner has relied on decision in the case of Rajneesh Aggarwal v. Amit J. Bhalla, 2001 Cri.L.J. 708, where the Apex Court has held that the accused cannot escape from the liability for dishonour of cheque envisaged under Section 138 of the Negotiable Instruments Act, on basis of a payment made subsequently. Mr. Dave submitted that, here the amount is paid at a later point of time and payment of the amount of cheque could not have absolved respondent No.1 from the liability of facing the criminal prosecution. He, therefore, urged that the petition may be allowed.

4. Learned Advocate Mr. Prachchhak appearing fro respondent No.1 has opposed this revision. He submitted that the scope of interference in revision is very limited. Mr. Prachchhak submitted that the order under challenge is that of filing the complaint, which cannot be considered as illegal, improper, perverse or such as would result into miscarriage of justice. He submitted that the Court, therefore, may not interfere with the order.

5. Learned Additional Public Prosecutor Mr. Desai appears for respondent No.2.

6. Considering the contentions raised before this Court, what transpires is that the complaint was for dishonour of a cheque of Rs.72,600/-. That amount has

been received by demand draft, as per the endorsement and learned advocate for the revisioner has chosen to withdraw the complaint. There is no prohibition against withdrawal of a complaint and the learned Magistrate has, on basis of that endorsement, passed an order to file the complaint. No illegality or perversity can be attributed to that order. This Court is, therefore, no inclined to exercise its revisional jurisdiction in favour of the revisioner by interfering with the said order.

6.1 The decision relied upon by learned Advocate Mr. Dave would not be applicable to the present case for the reason that there is no question of absolving the accused from his liability under Section 138 of the Negotiabl

the complaint on basis of an endorsement of withdrawal. The cause for grievance, if any, for the revisioner is against the action of his advocate before the Court below, which cannot be redressed by this Court by entertaining this revision. The revision application, therefore, must fail and the same is dismissed. Rule is discharged.

[A.L. DAVE, J.]
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